

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KEVIN LYNN FERNANDEZ,

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendants.

3:06-cv-0628-LRH-WGC

ORDER

Before the court are plaintiff Kevin Lynn Fernandez's ("Fernandez") various motions to reconsider including: (1) motion to reconsider the Magistrate Judge's order granting his motion for a sur-reply (Doc. #626<sup>1</sup>); (2) motion to reconsider the Magistrate Judge's order denying his motion for contempt sanctions (Doc. #627); (3) motion to review the Magistrate Judge's order denying his motion to file supplementary exhibits (Doc. #638); and (4) motion to review the Magistrate Judge's order denying his motion to file supplementary authorities (Doc. #639).

**A. Motion to Reconsider (Doc. #626)**

Fernandez challenges the Magistrate Judge's order (Doc. #613) granting his motion to file a sur-reply (Doc. #612) but finding that his sur-reply did not affect the outcome of the Magistrate Judge's report and recommendation (Doc. #610). Local Rule IB 3-1 authorizes a District Judge to

<sup>1</sup> Refers to the court's docket entry number.

1 reconsider any pretrial matter referred to a magistrate judge pursuant to LR IB 1-3 where it has  
2 been shown that the Magistrate Judge's order is clearly erroneous or contrary to law. Here,  
3 Fernandez argues that the Magistrate Judge's order was in error because his sur-reply contained  
4 legal and factual arguments that would have affected the outcome of the report and  
5 recommendation. *See* Doc. #626.

6 The court finds that Fernandez's argument is without merit. The Magistrate Judge issued a  
7 clear order identifying all of the issues outlined in Fernandez's sur-reply and determined point by  
8 point how they did not affect the report and recommendation. Fernandez does not provide any  
9 legal or factual support warranting reconsideration of the court's order other than his own  
10 conclusory arguments. *See United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998) (holding  
11 that a previous order may be reconsidered when the decision is clearly erroneous, there has been an  
12 intervening change of law, or there is manifest injustice). Accordingly, the court shall affirm the  
13 Magistrate Judge's order and deny Fernandez's motion for reconsideration.

14 **B. Motion to Reconsider (Doc. #627)**

15 Fernandez next challenges the Magistrate Judge's order (Doc. #609) denying his motion for  
16 contempt sanctions against his former counsel, Jeffrey S. Blanck ("Blanck") (Doc. #599).  
17 Fernandez contends that the Magistrate Judge improperly concluded that Blanck had satisfied his  
18 duty to Fernandez by sending the client file because, as Fernandez claims, the file was incomplete.  
19 However, Fernandez provides no evidence to support his claim that Blanck misrepresented to the  
20 court that he had complied with all of the court's prior orders and mailed Fernandez all the  
21 documents in his possession. Accordingly, the court shall deny Fernandez's motion.

22 **C. Motions to Review (Doc. ##638, 639)**

23 In his motions for review, Fernandez argues that the Magistrate Judge was without authority  
24 to issue the underlying orders (Doc. ##632, 633) because (1) this action was not referred to the  
25 magistrate judge, and (2) the motions were dispositive in nature and, as such, were out of a  
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1 magistrate judge's purview.

2       The court finds that Fernandez's arguments are without merit. First, this action was properly  
3 referred to the Magistrate Judge pursuant to LR IB 1-3 which provides that "a magistrate judge may  
4 hear and finally determine any pretrial matter not specifically enumerated as an exception in  
5 28 U.S.C. § 636(b)(1)(A)." Because Fernandez's motions to file supplements are not an  
6 enumerated exception under 28 U.S.C. § 636(b)(1)(A), the Magistrate Judge had authority to  
7 decide the motions and issue appropriate orders. Second, motions to file supplements are not  
8 dispositive motions because by their nature they only seek to add additional information to the  
9 record for the court's consideration. Accordingly, the court shall affirm the Magistrate Judge's  
10 orders and deny Fernandez's motions for review.

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12       IT IS THEREFORE ORDERED the plaintiff's motion for reconsideration (Doc. #626);  
13 motion for reconsideration (Doc. #627); motion for review (Doc. #638); and motion for review  
14 (Doc. #639) are DENIED.

15       IT IS SO ORDERED.

16       DATED this 10th day of August, 2012.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE